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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/745,098 | 12/20/2000 | Carlos Orlando Vilacha Zanoni | 286765-00001 | 8858 |

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09/23/2004

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3727

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/745,098

Applicant(s)

VILACHA ZANONI ET AL.

Examiner

Nathan J. Newhouse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

1. In response to the decision on appeal (paper #17—mailed Mar. 30, 2004), prosecution on claims 14-16 is closed. Claims 14-16 are considered withdrawn. An action on claims 1-13 follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Punte (US 2,327,455).

Punte teaches a crown closure comprising a shell having a top, a curved portion (13), a liner (12) and a skirt (10). The skirt has a plurality of serrations (11) as shown in the figures. The curve portion (13) is “adapted to be the same shape” as the mouth of the bottle (14). See page 2, left column, lines 20-29.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 2-6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Punte (US 2,327,455) in view of Leenaards (US 3,827,594).

Punte discloses the claimed invention except for the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the crown closure with the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Punte discloses the claimed invention except for the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations. It would have been an obvious matter of design choice to make the crown closure with the radius of the curved portion being about 4 mm, the shell blank having a diameter of about 35.5 mm and the shell having 20 serrations, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Leenaards teaches a similar crown closure with a radius of a curved portion between the top and skirt being 2 to 5 mm, the diameter of the shell of the crown closure being 20 to 40 mm and the skirt of the crown closure having 21 serrations for a 25 mm diameter crown closure. As Leenaards teaches that these dimensions are

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known in the crown closure art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize these dimensions to make the crown closure of Punte.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Punte (US 2,327,455) in view of Ferngren (US 2,099,056).

Punte teaches everything except for the bottle mouth having an upper and lower portion with a fulcrum therebetween.

Ferngren teaches a similar bottle and closure wherein the bottle mouth has an upper and lower portion with a fulcrum therebetween. See figure 1. This arrangement improves the seal between the closure and bottle neck. See page 2, right column, lines 5-17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bottle neck of Punte with an upper portion and lower portion with a fulcrum therebetween as taught by Ferngren to improve the seal between the closure and bottle.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday, 6:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Norman J. Newhouse
Primary Examiner
Art Unit 3727


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